

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

SHAWN DRUMGOLD,

Plaintiff

v.

TIMOTHY CALLAHAN,
FRANCIS M. ROACHE,
PAUL MURPHY, RICHARD WALSH,
and THE CITY OF BOSTON,

Defendant

C.A. NO.: 04-11193NG

**DEFENDANTS' MOTION FOR DISCLOSURE OF
CRIMINAL OFFENDER RECORD INFORMATION**

Defendants move this Honorable Court, pursuant to M.G.L. ch. 6 § 167 for an Order directing the Criminal Systems Board ("CHSB") to supply to the Defendants any Criminal Offender Information ("CORI") of the witnesses identified in Exhibit A (attached).

In support of this motion, the Defendants state as follows:

1. Plaintiff filed a four count complaint in this matter. Count I, pled against the individual defendants, alleges violation of the Plaintiff's right to due process and to a fair trial. Count II alleges conspiracy to violate Plaintiff's rights to a fair trial and to receive exculpatory evidence. Count III is Plaintiff's *Monell* claim against the City of Boston. Count IV alleges that the individual defendants violated Plaintiff's state constitutional law rights by the use of threats, intimidation and coercion.

2. Plaintiff's claims are based on (a) testimony provided by witnesses who testified in the 1989 trial who now recant that testimony; and (b) testimony provided by the plaintiff and witnesses which has changed significantly statements given in 1988, testimony offered during

the 1989 trial, testimony offered during the 2003 hearing on the Motion for New Trial and affidavits and testimony provided during discovery in the instant case. The individuals identified in Exhibit A have provided testimony through statements, affidavits, interviews and/or depositions and have been identified as prospective witnesses by the Defendants in their Rule 26.2 Disclosure Statements.

3. Under Massachusetts law, prior criminal history may be used for impeachment purposes at trial and is therefore discoverable because it is reasonably calculated to lead to the discovery of admissible evidence. *Estate of Strong v. American Drug Stores, Inc.* 14 Mass. L. Rptr. 353, 2002 WL 221028 (Mass. Super. 2002), citing *Frederick v. Canal Electric Co.*, 1995 WL 1146178 (Mass. Super 1995), discussing *Schuurman v. North Reading*, 139 F.R.D. 276 (D. Mass. 1991) (criminal records, including embarrassing and irrelevant information, are discoverable for impeachment purposes); Mass. R. Civ. P. 26(b)(1).

4. The Criminal History Systems Board has given a general right of access to criminal offender record information as may be used for impeachment purposes pursuant to M.G.L. ch. 233, § 21, to any attorney who is counsel of record for a party in a case who certifies in writing to the Court that he or she will only seek such records of parties and/or prospective witnesses and only for trial strategy or impeachment purposes and will not otherwise disclose it to any unauthorized person. *Schuurman*, 139 F.R.D. at 276. See also, 803 C.M.R. § 3.04.

5. The undersigned counsel for the Defendants hereby certify that the conviction and probation records of the witnesses, and aliases, if any, will be used only for purposes of trial strategy, cross examination, including but not limited to bias and/or impeachment purposes, and will not be otherwise disclosed to any person who is not authorized for access to Criminal Offender Record Information.

6. The Due Process clause of the Fourteenth Amendment of the United States Constitution requires that the Defendants have access to this information.

7. Article XI of the Declaration of Rights to the Massachusetts Constitution (remedies by recourse to the law, to be free, complete and prompt) requires that the Defendants have access to this information.

WHEREFORE, the Defendants, Callahan, Walsh, Murphy and the City of Boston, move that this Honorable Court issue the attached Order allowing the Defendants access to the conviction and probation records of the individuals identified in Exhibit A.

Defendant,
RICHARD WALSH,

By his attorney,

/s/ Hugh R. Curran

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Defendants,
CITY OF BOSTON AND
FRANCIS M. ROACHE,

By their attorney,

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CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that on the 28th day of January, 2008, I electronically filed with within document with the Clerk of the United States District Court for the District of Massachusetts, using the CM/ECF System. The following participants have received notice electronically:

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